

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7506

Petition of Telephone Operating Company of Vermont     )  
LLC, d/b/a FairPoint Communications, for waiver of     )  
certain requirements under the Performance Assurance     )  
Plan and Carrier to Carrier Guidelines                     )

Order entered: 5/19/2011

**PROCEDURAL ORDER AND NOTICE OF WORKSHOP**

**I. INTRODUCTION**

This proceeding began for the purpose of considering a request by Telephone Operating Company of Vermont LLC, d/b/a FairPoint Communications ("FairPoint"), to waive certain requirements under the Performance Assurance Plan ("PAP") and wholesale Carrier-to-Carrier ("C2C") Guidelines that apply to FairPoint. The Board denied FairPoint's waiver request in 2009. FairPoint also requested that the Board use this docket for the purpose of developing a simplified PAP and submitted a proposal for such an arrangement.<sup>1</sup> Due to the difficulties arising from the failures of FairPoint's retail and wholesale operational support systems and subsequent reorganization of FairPoint under Chapter 11 of the federal Bankruptcy Code, no progress was made on the simplification efforts.

On March 24, 2011, FairPoint submitted a request for approval of a Simplified Metrics Plan and Revised Wholesale Performance Plan. The new proposal differed materially from the original petition. Accordingly, on April 20, 2011, I convened a status conference in this proceeding to consider the future steps in this docket. In this Order, I establish a schedule and address certain procedural matters.

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1. The development of a simplified PAP had been contemplated in Docket No. 7270, the proceeding in which the Board approved FairPoint's acquisition of the landline telephone business of Verizon.

## **II. MOTION FOR STAY**

Prior to the status conference, CTC Communications Corp., Lightship Telecom LLC, and Conversant Communications of Vermont LLC (all doing business as "One Communications"), National Mobile Communications Corp., d/b/a Sovernet Communications ("Sovernet"); and segTEL, Inc. ("segTEL") (collectively, the competitive local exchange carriers or "CLECs") jointly submitted a Motion to Stay Proceedings until the New Hampshire Public Utilities Commission ("NH PUC") has completed an audit of FairPoint's PAP. FairPoint opposed the request.

The issue raised by the CLECs — the accuracy of the data reported in the PAP — has great significance. The entire PAP mechanism as it exists today, and presumably the simplified PAP to be designed in this proceeding, rely upon the information reported by FairPoint to determine whether FairPoint is providing adequate wholesale service quality. If that data is not accurate, the Board cannot conclude that FairPoint is meeting its obligations towards competitors (such as those embodied in the conditions in Docket No. 7270, the proceeding in which we approved FairPoint's acquisition of Verizon). On February 25, 2011, the NH PUC announced that it would conduct an audit of FairPoint's existing PAP and stay pending proceedings designed to achieve the same purposes as this one and the Docket No. 7539 consideration of a change to the dollar amount at risk. After considering objections from FairPoint, on May 6, 2011, the NH PUC "determined that an audit of FairPoint's existing PAP is a necessary foundation for information decisions about reasonable and appropriate wholesale business interactions between FairPoint and the CLECs."<sup>2</sup> The NH PUC observed that collaboration between FairPoint and the CLECs on PAP revisions has failed because of uncertainty as to whether the current PAP is being implemented and applied correctly. The NH PUC added that addressing the weaknesses in the current PAP was essential to consideration of a simplified version.<sup>3</sup>

I share the concerns expressed by the CLECs and the NH PUC. The experience in New Hampshire suggests that FairPoint is not accurately measuring or reporting the current metrics. It

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2. Northern New England Telephone Operations LLC d/b/a FairPoint Communications NNE, Dockets DT 09-059, DT 09-113, DT 09-206, and DT 11-061, Procedural Order, No 25,221 (NH PUC May 6,2011) at 13.

3. *Id.* at 17.

is hard to envision adoption of a modified version of the PAP until this uncertainty is removed, either through reliance upon the NH PUC's audit or some other mechanism that provides similar assurances of reliability. Thus, before issuance of a Proposal for Decision in this docket, I would expect that all parties would have an opportunity to evaluate the results from the New Hampshire audit and provide recommendations based thereon.

Nonetheless, I am not persuaded that it is necessary to stay this proceeding completely.<sup>4</sup> FairPoint has put forward a simplified PAP. It is possible to begin consideration of FairPoint's proposal on the assumption that the data necessary for its effectuation can be accurately provided by FairPoint. For their part, CLECs should have a basic understanding of the services they purchase from FairPoint and the range of metrics that FairPoint should report to provide an accurate picture of wholesale service quality and ensure that FairPoint meets its obligations to its competitors. These needs may be different or more extensive than is reflected in FairPoint's proposal. Work on identifying the CLECs needs and possible negotiations can begin on the assumption that the data will be accurate, with adjustments made during the process based upon the audit results. For this reason, at the status conference, I denied the motion to stay.

### III. SCHEDULE

FairPoint proposed a schedule with hearings in October. One Communications, Sovernet, and segTEL proposed an alternative that included multiple phases and would last upwards of two-and-a-half years.

I am skeptical that the schedule put forward by FairPoint is achievable. It is predicated on the assumption that all three states will proceed in tandem, which seems unlikely given the decision of the NH PUC to stay its parallel proceedings. Moreover, it appears unlikely that the

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4. The Hearing Examiner in Maine reached a similar conclusion in that state's parallel proceeding. *NORTHERN NEW ENGLAND TELEPHONE OPERATIONS, LLC d/b/a FAIRPOINT COMMUNICATIONS-NNE Request for Modification of Total Amount at Risk Under Performance Assurance Plan*, Docket No. 2009-291 and *MAINE PUBLIC UTILITIES COMMISSION Investigation into Simplified Performance Assurance Plan (PAP) for Northern New England Telephone Operations, LLC d/b/a FairPoint Communications-NNE*, Docket No. 2009-334, Order of May 3, 2011.

Department of Public Service ("Department") will have its expert witnesses on board before the end of June; after that, it will be necessary to ensure that the Department has adequate time for discovery and investigation. In addition, as I stated at the status conference, the issues raised in the simplified PAP are best resolved through negotiation; it will be very difficult to resolve many of the detailed issues concerning specific metrics, measurement techniques, measurement of low volume services, and others in a litigated setting. But FairPoint's proposal builds in little time for such discussions.

By contrast, the CLEC proposal appears to be much too long. The CLECs have not suggested why it should take well over two years to complete this process.

Faced with these alternatives, I have adopted a modified version of FairPoint's proposed schedule. The first step in the process, a workshop at which FairPoint lays out its proposal and competitors, the Department, and the Hearing Officer can ask questions, is appropriate. The remaining steps also make sense (although with some longer time periods). Nonetheless, parties should expect that this schedule will change over time (for example, as noted above, the Department may seek changes after it hires its expert).

May 9, 2011	FairPoint Direct Testimony
May 26, 2011	Workshop*
June 13, 2011	Data Requests on FairPoint
July 11, 2011	Responses to Data Requests
August 1, 2011	Respondent Direct Testimony
August 17, 2011	Workshop*
August 31, 2011	Data Requests on Respondents
September 26, 2011	Responses to Data Requests
October 5, 2011	Rebuttal Testimony
October 17, 2011	Data Requests on Rebuttal Testimony
October 31, 2011	Data Responses
November 8, 2011	Hearing

\* FairPoint has proposed that workshops would be consolidated among the three northern New England states, in the interest of administrative efficiency. This is a good suggestion. FairPoint should work with the other two states to coordinate dates for the workshops. If such coordination is not possible, the first workshop will proceed in Vermont alone.

**NOTICE OF WORKSHOP**

The Hearing Officer will conduct a workshop on Thursday, May 26, 2011, commencing at 9:30 A.M., at the Public Service Board Hearing Room, located on the 3<sup>rd</sup> Floor of the People's United Bank building (formerly known as the Chittenden Bank Building), at 112 State Street, Montpelier, Vermont. The workshop will be recorded by a court reporter.

**WAIVER OF BOARD RULE 2.201(C)**

FairPoint filed motions pursuant to Rule 2.201(C) requesting permission for two out-of-state counsel — Patrick C. McHugh, Vice President and Assistant General Counsel of FairPoint Communications, Inc., and Harry N. Malone, Devine, Millimet, & Branch — to appear on behalf of FairPoint along with Peter H. Zamore. No party opposed the motions and they are granted.

**SO ORDERED.**

Dated at Montpelier, Vermont, this 19<sup>th</sup> day of May, 2011.

s/ George E. Young

George E. Young  
Hearing Officer

OFFICE OF THE CLERK

FILED: May 19, 2011

ATTEST: s/ Susan M. Hudson  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)*